

## LIMITING THE OPERATION OF CERTAIN STATUTES TO ENABLE CONGRESS TO EMPLOY SPECIAL COUNSEL

FEBRUARY 25 (legislative day, FEBRUARY 7), 1944.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H. J. Res. 230]

The Committee on the Judiciary, to whom was referred the resolution (H. J. Res. 230) entitled "Joint resolution to limit the operation of sections 109 and 113 of the Criminal Code, and sections 361, 365, and 366 of the Revised Statutes, and certain other provisions of law," having duly considered the same, now report the resolution favorably and recommend that it do pass, without amendment.

#### STATEMENT

The following explanation of the resolution is found in House Report No. 1117 thereon:

On December 1, 1943, Messrs. Goodwin B. Watson, William E. Dodd, Jr., and Robert M. Lovett filed petitions in the United States Court of Claims for the recovery of salary alleged to be due them by the United States and challenging the constitutionality of the act (Public Law 132, 78th Cong., 1st sess.) pursuant to which their salaries were terminated.

On December 6, 1943, the Attorney General addressed a letter to the Speaker of the House which stated in part as follows: "At the time that this bill was before the President for approval or veto the question of constitutionality was raised. It was his view as stated in his message that the provision was unconstitutional \* \* \*. In these circumstances I feel that the Congress should be afforded an opportunity to be represented by their own counsel." In subsequent letters, attached hereto, the Attorney General has approved the appearance of counsel on behalf of the Congress. The House has adopted a resolution (H. Res. 386, 78th Cong.) for the employment of counsel and counsel has been employed pursuant thereto.

The House Joint Resolution (230) before this committee would suspend, or limit the operation of statutes which impose certain restrictions, requirements, or penalties in relation to employment of counsel in the above proceedings. A similar resolution (S. J. Res. 54, 68th Cong., 1st sess., 43 Stat. 5, 6) was passed to enable Owen J. Roberts to appear in the *Teapot Dome cases* (opinion of the Attorney General concerning the *Roberts case*, House Report No. 1959, 70th Cong., 2d sess.).

The sections enumerated in House Joint Resolution 230 are set forth in full as follows:

Section 109, Criminal Code (U. S. C., T. 18, sec. 198): Whoever, being an officer of the United States, or a person holding any place of trust or profit, or discharging any official function under, or in connection with any executive department of the Government of the United States, or under the Senate or House of Representatives of the United States, shall act as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, shall aid or assist in the prosecution or support of any such claims, or receive any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall be fined not more than \$5,000, or imprisoned not more than 1 year, or both.

Section 113, Criminal Code (U. S. C., T. 18, sec. 203): Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the head of a department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court martial, bureau, officer, or any civil, military, or naval commission whatever, shall be fined not more than \$10,000 and imprisoned not more than 2 years; and shall moreover thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

Retired officers of the Army, Navy, Marine Corps, and Coast Guard of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section: *Provided*, That nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

361. Revised Statutes (U. S. C., T. 5, sec. 306): The officers of the Department of Justice, under the direction of the Attorney General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of departments, and the heads of bureaus and other officers in the departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed or paid to any other attorney or counselor at law for any service herein required of the officers of the Department of Justice, except in the cases provided by section 312 of this title.

365. Revised Statutes (U. S. C., T. 5, sec. 314): No compensation shall be allowed to any person, besides the respective district attorneys and assistant district attorneys, for services as an attorney or counselor to the United States, or to any branch or department of the Government thereof, except in cases specially authorized by law, and then only on the certificate of the Attorney General that such services were actually rendered, and that the same could not be performed by the Attorney General, or Solicitor General, or the officers of the Department of Justice, or by the district attorneys.

366. Revised Statutes (U. S. C., T. 5, sec. 315): Every attorney or counselor who is specially retained, under the authority of the Department of Justice, to assist in the trial of any case in which the Government is interested, shall receive a commission from the head of such department, as a special assistant to the Attorney General, or to some one of the district attorneys, or as a special attorney, as the nature of the appointment may require; and shall take the oath required by law to be taken by the district attorneys, and shall be subject to all the liabilities imposed upon them by law. Foreign counsel employed by the Attorney General in special cases shall not be required to take the oath required by this section.

JOHN H. KERR, *Member of Congress.*

NOTE.—The pending resolution does not repeal any section of the United States Code of Laws, but simply limits the operation of the provisions referred to with respect to counsel acting in the above cases only.

DEPARTMENT OF JUSTICE,  
Washington, D. C., December 6, 1943.

Hon. JOHN H. KERR,  
*House of Representatives, Washington, D. C.*

DEAR JUDGE KERR: I have your letter of December 4, in connection with the suits filed in the Court of Claims by Messrs. Watson, Dodd, and Lovett, to recover salaries terminated pursuant to section 304 of Public Law 132.

Enclosed is a copy of a letter which I have sent to the Speaker of the House. I agree that under the circumstances here involved the Congress should be afforded an opportunity to be represented by its own counsel. You will observe that in my letter to the Speaker, I have advised him that I shall be glad to suggest to the court that anyone selected by the Congress be given the right to file a brief and to argue on behalf of its position.

With kindest regards.

Sincerely yours,

FRANCIS BIDDLE,  
*Attorney General.*

DECEMBER 6, 1943.

The HONORABLE SAM RAYBURN,  
*Speaker of the House of Representatives, Washington, D. C.*

MY DEAR MR. SPEAKER: Petitions have been filed in the Court of Claims on behalf of Messrs. Dodd, Watson, and Lovett, demanding judgment for pay alleged to have been earned after November 15, 1943, for services rendered the respective departments by which they are employed. These cases arise under the act of July 12, 1943, Public, No. 132, Seventy-eighth Congress, first session. As you may recall, section 304 of the act provided as follows:

"No part of any appropriation, allocation, or fund (1) which is made available under or pursuant to this Act, or (2) which is now, or which is hereafter made, available under or pursuant to any other Act, to any department, agency, or instrumentality of the United States, shall be used, after November 15, 1943, to pay any part of the salary or other compensation for the personal services of Goodwin B. Watson, William E. Dodd, Junior, and Robert Morris Lovett, unless prior to such date such person has been appointed by the President, by and with the advice and consent of the Senate: *Provided*, That this section shall not operate to deprive any such person of payment for leaves of absence or salary, or of any refund or reimbursement, which have accrued prior to November 15, 1943: *Provided further*, That this section shall not operate to deprive any such person of payment for services performed as a member of a jury or as a member of the armed forces of the United States nor any benefit, pension, or emolument resulting therefrom."

At the time that this bill was before the President for approval or veto the question of constitutionality was raised. It was his view as stated in his message that the provision was unconstitutional. He nevertheless approved the bill because of the urgency of the Government's need for the appropriations which would have been vetoed along with this provision.

The Department of Justice proposes to file demurrers to the petitions. The vital questions involved are the constitutional questions, which, in my judgment, can appropriately be raised and disposed of by demurrer.

It is my purpose to give the court the benefit of as candid an analysis as I can make. However, my position concurs with the President's. I think it the right position. It is at odds with the position of the Congress. In these circumstances I feel that the Congress should be afforded an opportunity to be represented by their own counsel. I shall be glad to suggest to the court that anyone you may select be given the right to file a brief and to argue on behalf of the position of the Congress. I shall also be glad to confer with whomever you name for the purpose of working out the best procedures finally to dispose of these cases.

I regret that in these cases I find it impossible to advocate with conviction the views of the Congress.

I have sent a similar letter to the Vice President.

Sincerely yours,

FRANCIS BIDDLE, *Attorney General.*

DEPARTMENT OF JUSTICE,  
Washington, D. C., December 15, 1943.

HON. JOHN H. KERR,  
*House of Representatives, Washington, D. C.*

DEAR JUDGE KERR: Confirming today's telephone conversation with you, I shall, of course, be happy to arrange with the court so that counsel selected by the House or by your committee shall have the right to file a brief and argue on behalf of the position of the Congress in the *Dodd, Watson, and Lovett cases*. It is for the Congress to decide how the selection of counsel shall be made, whether the two Houses wish to act jointly or separately, and whether they wish to act by the appropriate committees or by resolution of either or both Houses.

With kindest regards.

Sincerely yours,

FRANCIS BIDDLE, *Attorney General.*

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DEPARTMENT OF JUSTICE,  
Washington, D. C., January 31, 1944.

JOHN H. KERR,  
*House of Representatives, Washington, D. C.*

MY DEAR JUDGE KERR: As you know, we have had several conferences since I received your letter of January 19, 1944, in an attempt to make arrangements which would satisfy the Congress that the issues in these cases were presented in such a way as to raise the constitutional claims of the Congress fairly and adequately. Under the statutes applicable I cannot divest myself of the responsibility to defend the interests of the United States in these suits. However, I think it in the interests of the United States that the pleadings should, in the judgment of your counsel, properly raise such issues as he deems relevant to the constitutional claims of the Congress and that the proof should comprehend such facts as he deems material in support of those claims. Also, of course, as I have said before he should have entire freedom in filing briefs and making oral arguments in support of the position of the Congress.

I understand that your counsel feels that general traverses will fully satisfy these purposes as pleadings in the cases, and I am prepared to file such general traverses. I will also make appropriate arrangements so that he can put before the court the proof that he deems necessary and which is appropriate to support the congressional claims.

I trust that this solution of the matter will be considered by your committee satisfactorily to meet what you deem are the rights of the Congress in this situation.

With kindest regards.

Sincerely yours,

FRANCIS BIDDLE,  
*Attorney General.*

The Committee on the Judiciary have carefully considered House Joint Resolution 230 and believe that its immediate enactment is advisable to the end that competent counsel may be permitted to defend the action of the Congress in enacting section 304 of Public Law 132.

